

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

MICHAEL C. KAUFMAN  
RICHARD A. KAUFMAN

**DECISION & ORDER**

10-CR-6165-CJS

Defendants.

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On August 24, 2011, counsel for the defendant Michael C. Kaufman filed a Supplemental Notice of Motion, which petitioned the Court to sever this defendant from the present case, and to continue the trial of the charges due to mental and physical health issues suffered by Michael C. Kaufman. Thereafter, the Court directed that on or before September 26, 2011, Michael C. Kaufman's counsel gather and forward to government counsel the medical records in support of that motion. In addition to disclosing the defendant's medical records, and in further support of the severance/continuance motion, defendant's counsel filed an Affidavit by Dr. Joseph M. Delahanty, the defendant's treating cardiologist.

In response to defendant Michael C. Kaufman's claim that he was mentally and physically unfit to stand trial, government counsel requested that the Court issue an Order directing that he undergo a mental and physical evaluation by Bureau of Prisons medical staff.

On January 27, 2012, the Court issued such an Order, and Michael C. Kaufman then reported to the Bureau of Prisons Federal Medical Center in Devens, Massachusetts. After his release from the Devens Medical Center on April 5, 2012, a report, dated May 22, 2012, was forwarded to the Court by the Devens Medical Center staff (the "Devens Report"), which contained conclusions that Michael C. Kaufman was mentally and physically competent to stand trial.

Upon reviewing the Devens Report, defendant's counsel requested a hearing on the issue as to whether this defendant was physically unfit to stand trial, and affirmatively waived the defendant's mental competency ground for the requested severance and continuance. On September 7, 2012, a physical competency hearing was held, comprising the testimony of the defendant's treating cardiologist Joseph M. Delahanty and Dr. Sandra Howard, the medical director at the Devens Medical Center. Upon the testimony of both doctors, as between which there was little, if any conflict, the Court determined pursuant to the factors delineated in *United States v. Reddy*, 2003 WL 22339464, that: (1) although Michael C. Kaufman is suffering a permanent cardiac condition, he is stable under a regimen of medications and exercise; (2) Michael Kaufman is able to engage in the normal activities of a 70 year old male with some limitation due to back pain which has been moderated with medication; (3) precautions would be taken during the trial such as breaks in the proceedings and medical assistance as necessary; (4) the current

charges comprise serious bank fraud felonies and that any further delay would be to the detriment of the government and the public; and (5) even the defendant's treating cardiologist, Dr. Delahanty opined that a trial would not pose a substantial risk to the defendant's health and/or life.

**WHEREFORE**, upon the findings noted herein, it is hereby

**ORDERED** that the defendant Michael C. Kaufman's motion for severance and a continuance is denied, and it is further ordered that a copy of the Court's competency hearing decision be filed with this Order.

DATED: Rochester, New York, October 10, 2012

*Charles J. Siragusa*  
HONORABLE CHARLES J. SIRAGUSA  
U. S. District Court Judge, WDNY